IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.19955 of 1994

Between:

1 Chebiyyam Sri Rama Venkata Jagannadha Murthy, s/o Subrahmanyam, R./o Pragadapalli, Polavaram (M), W.G.Dist.
2 Chebiyyam Papa Laxmi, W/o Ch. S.R.V. Jagganadha Murthy, R./o Pragadapalli, Polavaram (M), W.G.Dist.
3 Chebiyyam Narsimha Murthy, S/o Subrahmanyam, R./o Pragadapalli, Polavaram (M), W.G.Dist.

...PETITIONERS

AND

1 The Commissioner of Survey, Settlements & Land Records , Nampally Station Raod, Hyderabad.
2 The Director of Settlements, Gagana Vihar, IVth Floor, Hyderabad.
3 The Settlements Officer, Eluru (Joint Collector, W.G.Dist, Eluru).
4 The Mandal Reveue Officer Polavaram (M), W.G.Dist

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records connected with CSS &LR's proceedings No.L2/1234/84 dt:28.3.94 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction and restore the orders of the Director of Settlements passed in A.P. 326/78 dt:14.5.84.

Counsel for the Petitioners: MR.A.RANGACHARYULU
Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PTITION NO.19955 OF 1994

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ORDER:

Heard Sri A.Rangacharyulu, the learned counsel appearing for the petitioners and the learned Government Pleader for Revenue appearing for the respondents.

The petitioners herein filed this Writ Petition, *inter alia,* seeking for a Writ of Certiorari assailing the orders dated 28.03.1994 passed by the first respondent herein and for restoration of the orders passed earlier by the second respondent dated 14.05.1984.

The facts which are not in dispute are that the land in question in R.S.No.418/3 and 418/4 admeasuring H. 0.50 and H. 0.51 respectively situated in Pragadapalli village, Polavaram Mandal, West Godavari District was the ancestral property of one Kurumalla Venkata Rao, who had executed a non-possessory registered mortgage deed on 11.07.1921 in favour of Smt. Aravalamma and subsequently the same was redeemed and after his death, his widow Mahalaxmamma sold the said property as per the registered sale deed dated 27.04.1925 to Gowramma. Consequent upon the death of Gowramma, the said property was inherited by her son Appanna, who sold the same in favour of Madasu Satyam as per the registered sale deed dated

01.08.1958, who in turn sold the same to the petitioners jointly under a registered sale deed dated 03.05.1965. Therefore, the claim of the petitioners is that they have been in possession and enjoyment of the land in question all along. All these parties belong to non-tribal and according to the petitioners, all the aforesaid transactions are valid and not prohibited by any law.

Similarly the land in R.S.No.418/5 and 418/6 admeasuring H.0.74 and H. 0-70 situated in the same village pertain to Manikireddy Venkatarao as evident from Amarakam account of 1336 fasli under patta No.12 who executed a settlement deed in favour of his nephew Manikireddy Venkataswamy under a registered settlement deed dated 24.03.1948. The said Venkataswamy sold a portion thereof (R.S.No.418/6) in favour of the second petitioner under an agreement of sale-dated 05.02.1968 and followed by the registered deed dated 09.07.1971. Another piece of land was sold by Venkataswamy (R.S.No.418/5) to Narasimha Murthy, the brother of the first petitioner under an agreement of sale dated 25.07.1969 followed by the registered sale deed dated 09.07.1971. Accordingly, the purchasers have been in possession and enjoyment of the lands respectively and paying cist all along. These parties are also non-tribals and their transactions are lawful.

Originally these lands are situated in Pithapuram Zamin Estate, which were taken over by the Government under the provisions of the A.P. Estates (Abolition & Conversion into Ryotwari) Act, 1948 on 07.09.1949. All these lands are fell within the scheduled area. As per Regulation No.2/70, the scheme of ryotwari settlement was introduced in the erstwhile estates. As per Section 7 thereof, every ryot is

entitled to a ryotwari patta if his possession is lawful. However, no such benefit could be given if any purchase is made in violation of the Agency Tracts Interest and Land Transfer Act, 1917 (Act 1/1917). Further, any non-tribal cannot acquire land without prior permission from the Collector after 04.03.1959 in the scheduled area.

The third respondent herein had initiated *suo moto* enquiry under Section 9 of the A.P. Schedule Areas Ryotwari Settlement Regulation 2/70 and rejected the claim of patta of the petitioners on the ground that the petitioners' possession is only from the year 1965 and no permission has been obtained from the Collector for the said sale transaction. The said orders were passed on 30.09.1977. According to the petitioners, the said finding as to possession from 1965 is totally erroneous and in fact his possession could have been traced from his predecessors and further there is no question of obtaining any prior permission from the Collector. Aggrieved thereby, the petitioners filed an appeal before the second respondent herein under Section 9(3) of Regulation 2/70 which was taken up as A.P.No.326/78. Meanwhile, the Special Deputy Collector (TW), Eluru had initiated proceedings under the A.P. Scheduled Areas Land Transfer Regulation 1/59 as per proceedings in S.R.No.201/81 and S.R.No.434/83. Therefore, the petitioners had to sustain their claim by placing all the relevant material and documents to prove their possession and entitlement all along. After holding an elaborate enquiry and considering the various documents filed by the petitioners including the zamindari patta issued in favour of Manikireddy Venkatarao in the year 1939, the Amarakam account of 1355 fasli and the land revenue receipts for the years 1968, 1969 and 1970 showing the petitioners' possession, passed the final orders on 30.03.1982 holding that the

possession of the petitioners was perfectly valid and there is no violation of the provisions of the A.P. Scheduled Areas Land Transfer Regulation 1/59 as amended by Regulation 1/70. The said orders have become final and no challenge has been made. Similarly, as per the orders dated 09.03.1984, the same authority i.e., the Special Deputy Collector held in respect of the other lands, the possession of the petitioners was perfectly valid and the said orders also had become final. On considering the entire material, the Director of Settlements after taking into consideration the various documents, passed the orders on 14.05.1984 holding that the petitioners' possession was continuous and even dates back much prior to 01.07.1945, held that no tribal was ever in possession of the land since 1917 onwards. Therefore, it was held that the petitioners were granted patta for the said land. Challenging the same, Tahasildar filed second appeal under Section 9(3) of Regulation 2/70 before the first respondent herein. Even though the petitioners filed the orders of the Special Deputy Collector (TW), Eluru, dated 09.03.1984 holding in their favour, without properly considering the effect thereof and also the findings given therein and the other documents filed in support, the first respondent allowed the said appeal under the impugned orders dated 28.03.1994 holding that the possession of the petitioners is not lawful and the mortgage does not disclose many aspects which are relevant and also held that the orders of the Special Deputy Collector (TW), Eluru were not on properly conducted enquiry. Hence, the Writ Petition.

Sri A.Rangacharyulu, the learned counsel for the petitioners strenuously, by taking to the entire chequered events, contended that once there is ample evidence on

record to show that basing on the possession much prior to the relevant period and also the findings as arrived at by the competent authority i.e., Land Transfer Regulation which has become final, it is not open for the first respondent to come to a different conclusion and in fact, the orders of the authority under the Land Transfer are purely binding and conclusive.

The learned Government Pleader appearing for the respondents sought to repel the said contentions on the ground that the enquiry as conducted is totally independent and has nothing to do with the Land Transfer Regulation and therefore, the first respondent has rightly come to the conclusion.

Considering these and other submissions made across the Bar, the question which arises for consideration is as to whether the petitioners have established their claim for grant of patta in regard to the lands in question and also incidentally as to whether the findings of the authority under the Land Transfer Regulation are binding.

There is no serious dispute in regard to the chequered events as pointed out on behalf of the petitioners, which virtually dates back to the year 1917. All the documents commencing from the registered mortgage deed dated 11.07.1921 and the subsequent sales made one after the other consequently in favour of the petitioner would show not only the continuity of the transfer of title but also the continuity of possession. Admittedly, there is nothing on record to show at any point of time that the land was in occupation or enjoyment of any tribal. The parties belong to non-tribal. There is no dispute to the fact that the authority under the Land Transfer Regulation as per the orders dated 30.03.1983 and also on 09.03.1984, held that the petitioners' possession was lawful and not violative of the said Regulations. In fact,

the said possession sought to be traced back to the petitioners' predecessors in title in these proceedings. There is no explanation forthcoming on behalf of the respondents as to why the said orders passed by the competent authority under the Land Transfer Regulation have not been challenged. Admittedly, the said proceedings of the findings arrived at have become final, conclusive and binding. Apart from the documents in respect of the petitioners' case, the finding given by the said authority lends sufficient support to the petitioners claim. Except holding that there was no proper independent enquiry, no other reason has been shown by the first respondent varying with the finding given by the said authority. Even in respect of the consistent evidence and the material in respect of title and possession, there was no discussion nor any valid rejection based upon acceptable reason. As rightly held by the second respondent, the petitioners' possession dates back to much prior to the relevant period and no tribal was ever in possession of the lands since 1917 nor attracts any violation of law. Except giving such bald reasoning, no material has been pressed into service that the petitioners' possession is not lawful. In the circumstances, it has to be held that on the totality of the facts and circumstances especially the unimpeachable evidence as produced on behalf of the petitioners and also the finding given by the authorities under the Land Transfer Regulation, it necessarily follows that the petitioners' possession is lawful and the question of any violation of any provisions of law does not arise. In the circumstances, the impugned orders passed by the first respondent are totally vitiated and are liable to be set aside.

The Writ Petition is accordingly allowed as prayed for. No costs.

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B. PRAKASH RAO, J

19th April 2005.

Chvn.

That Rule NISI has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday the Nineteenth day of April two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

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Settlements & Land Records , Nampally Station Raod,
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3 The Settlements Officer,
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4 The Mandal Reveue Officer
Polavaram (M), W.G.Dist

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